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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

HAHN WOO YANG,

Defendant and Appellant.

G045308

(Super. Ct. No. 11CF0033)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, James Edward Rogan, Judge. Affirmed as modified.

Brendan M. Hickey, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Scott Taylor and Marissa Bejarano, Deputy Attorneys General, for Plaintiff and Respondent.

THE COURT:*

Defendant contends his conviction for receiving stolen property should be vacated because he cannot be convicted of robbery and receiving stolen property based on the same property. The People concede defendant's conviction for receiving stolen property was in error and should be reversed.

I

On January 2, 2011, an employee of Home Depot saw defendant put a pair of bright yellow bolt cutters and a snake style flashlight underneath his rain coat. Defendant then walked past the cash register, picked up his backpack and duffel near the front door and walked out. Defendant asked the employee why he was following him, punched him in the eye, and walked away.

Defendant was apprehended by the police. The police searched the duffel bag and found a can of WD-40, a Black & Decker battery charger, a Duralast wrench and some watches from Wal-Mart. All of the items still had tags on them. An AutoZone manager testified that Duralast products are only sold at Autozone and the store did not carry Black & Decker battery chargers. Home Depot carries Black & Decker battery chargers and cans of WD-40.

Defendant was charged with second degree robbery (Pen. Code, §§ 211 and 212.5, subd. (c))¹; second degree commercial burglary of the battery charger from Home Depot (§§ 459 and 460, subd. (b)); and receiving stolen property (the battery charger from Home Depot and the wrench from AutoZone) (§ 496, subd. (a)). The jury convicted defendant of all three charges.

* Before Bedsworth, Acting P.J., Aronson, J., and Fybel, J.

¹ All further statutory references are to the Penal Code.

II

Defendant contends he cannot be convicted of stealing and receiving the same property pursuant to section 496, subdivision (a), which states: “no person may be convicted both pursuant to this section and of the theft of the same property.” (§ 496, subd. (a).) The People concede.

“The rule against dual convictions was originally a creature of the common law, founded on the notion that it is ‘logically impossible for a thief who has stolen an item of property to buy or receive that property from himself.’” (*People v. Ceja* (2010) 49 Cal.4th 1, 4-5.) “California courts have consistently reversed the conviction on the receiving charge in cases of improper dual convictions.” (*Id.* at p. 3.)

Defendant’s second degree robbery and burglary charges were based on the theft of the battery charger from Home Depot. During closing argument, the prosecutor argued that either the battery charger from Home Depot or the wrench from AutoZone could support the receiving stolen property charge. And when “the record does not disclose . . . what specific findings were made in convicting a defendant of a [theft charge], a second conviction based on a further finding that the defendant received that same stolen property is foreclosed.” (*People v. Jaramillo* (1976) 16 Cal.3d 752, 759.)

The People concede because there was nothing in the record to indicate what evidence the jury relied on in convicting defendant of receiving stolen property, it is possible the jury convicted defendant of the receiving stolen property count based on the battery charger. However, the battery charger is the same property which is the basis for the robbery count. And defendant cannot be convicted of both stealing and receiving the same stolen property pursuant to section 496, subdivision (a) because “commission of the theft *excludes* the possibility of a receiving conviction.” (*People v. Cejas, supra*, 49 Cal. 4th at p. 6, original italics.) Thus, we follow the precedent in cases of improper dual convictions and vacate and dismiss the receiving stolen property count.

III

Accordingly, defendant's conviction for second degree robbery and second degree commercial burglary are affirmed. The superior court is ordered to vacate and dismiss defendant's conviction for receiving stolen property.